

AMENDED IN ASSEMBLY MARCH 27, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## ASSEMBLY BILL

**No. 2066**

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**Introduced by Assembly Member Monning**

February 23, 2012

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An act to amend Sections ~~1569.53~~ 1569.525 and 1569.682 of the Health and Safety Code, relating to residential care facilities for the elderly.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2066, as amended, Monning. Residential care facilities for the elderly: revocation of licenses.

Existing law provides for the licensure and regulation of residential care facilities for the elderly. These provisions are administered by the State Department of Social Services. Violation of these provisions is a misdemeanor.

Existing law requires a licensee of a licensed residential care facility for the elderly to take all reasonable steps to transfer affected residents safely as a result of the forfeiture of a license, the change of use of the facility pursuant to the department's regulations, or the revocation of a license. This requirement includes providing each resident or the resident's responsible person with a written notice no later than 60 days before the intended eviction and, if 7 or more residents will be transferred as a result of the forfeiture of a license, revocation of a license, or change in the use of the facility, submitting a proposed closure plan to the department for approval.

This bill would eliminate the requirement that a licensee comply with these provisions on the basis of the revocation of a license. ~~The bill would instead require the department to make every effort to minimize~~

~~trauma for residents of the facility, including allowing a facility a closure date of 60 days following the revocation of the license, except as specified.~~

*Existing law requires, if the Director of Social Services determines that it is necessary to temporarily suspend a license of a residential care facility for the elderly in order to protect the residents or clients of the facility from physical or mental abuse, abandonment, or any other substantial threat to health or safety, the department to make every effort to minimize trauma for the residents. Existing law authorizes and requires the department, in the event of a temporary license suspension, to comply with specified procedures relating to the transfer of residents.*

*This bill would make these provisions applicable in the event that the director determines that it is necessary to revoke the license of a residential care facility for the elderly. The bill also would require that, upon an order to revoke a license, the licensee provide a 60-day notice of closure to the resident and the resident's responsible person within 24 hours of receipt of the department's order of revocation. The bill would authorize the department to allow the licensee to secure the services of a person who is not an immediate family member of the licensee or an entity that is not owned by the licensee to manage the day-to-day operations of the facility for at least 60 days, provided that the person or entity is licensed and in substantial compliance to operate a residential care facility for the elderly that is of comparable or greater size and comparable programming to the facility, and that the person or entity meets other specified requirements.*

*By expanding the definition of a crime, this bill would impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1. Section 1569.53 of the Health and Safety Code~~  
2 ~~is amended to read:~~

3     ~~1569.53. (a) Any license suspended or revoked pursuant to~~  
4 ~~this chapter may be reinstated pursuant to Section 11522 of the~~  
5 ~~Government Code.~~

6     ~~(b) If a license issued under this chapter for a residential care~~  
7 ~~facility for the elderly is suspended, revoked, temporarily~~  
8 ~~suspended, forfeited, canceled, or expires, the department shall~~  
9 ~~provide written notice of the occurrence within 10 days to the local~~  
10 ~~director of social services in the county in which the facility is~~  
11 ~~located.~~

12     ~~(c) If a license is revoked, the department shall make every~~  
13 ~~effort to minimize trauma for the residents of the facility. This~~  
14 ~~may include, but is not limited to, allowing the facility a closure~~  
15 ~~date of up to 60 days following the revocation of the license in~~  
16 ~~order for the facility to provide a 60-day notice to residents to~~  
17 ~~relocate, unless the department determines that a different closure~~  
18 ~~date is necessary, based on risks posed to the residents' health or~~  
19 ~~safety.~~

20     ~~SECTION 1. Section 1569.525 of the Health and Safety Code~~  
21 ~~is amended to read:~~

22     ~~1569.525. (a) If the director determines that it is necessary~~  
23 ~~to temporarily suspend or to revoke any license of a residential~~  
24 ~~care facility for the elderly in order to protect the residents or~~  
25 ~~clients of the facility from physical or mental abuse, abandonment,~~  
26 ~~or any other substantial threat to health or safety pursuant to~~  
27 ~~Section 1569.50, the department shall make every effort to~~  
28 ~~minimize trauma for the residents.~~

29     ~~The~~

30     ~~(b) The department shall contact any local agency that may have~~  
31 ~~placement or advocacy responsibility for the residents of a~~  
32 ~~residential care facility for the elderly after a decision is made to~~  
33 ~~temporarily suspend or to revoke the license of the facility and~~  
34 ~~prior to its implementation. The department shall work with these~~  
35 ~~agencies to locate alternative placement sites and to contact~~  
36 ~~relatives responsible for the care of these residents.~~

37     ~~The~~

1     (c) The department shall use physicians and surgeons and other  
2     medical personnel deemed appropriate by the department to provide  
3     onsite evaluation of the residents and assist in the transfer.

4     The

5     (d) The department may require the licensee to prepare and  
6     submit to the licensing agency a written plan for relocation and  
7     compliance with the terms and conditions of the approved plans,  
8     and to provide other information as necessary for the enforcement  
9     of this section.

10    (e) Upon an order to revoke a license, the following shall apply:

11    (1) The licensee shall provide a 60-day notice of closure to the  
12    resident and the resident's responsible person within 24 hours of  
13    receipt of the department's order of revocation.

14    (2) The department shall permit the licensee to secure the  
15    services of a person who is not an immediate family member of  
16    the licensee or an entity that is not owned by the licensee to manage  
17    the day-to-day operations of the residential care facility for the  
18    elderly for a period of at least 60 days, provided that all of the  
19    following conditions are met:

20    (A) A proposal is submitted to the department within 72 hours  
21    of the licensee's receipt of the department's order of revocation  
22    that includes both of the following:

23    (i) A completed "Application for a Community Care Facility  
24    or Residential Care Facility for the Elderly License" form (LIC  
25    200), or similar form as determined by the department.

26    (ii) A copy of the executed agreement between the licensee and  
27    the person or entity described in paragraph (2) that delineates the  
28    roles and responsibilities of each party and specifies that the  
29    person or entity described in paragraph (2) shall have the full  
30    authority necessary to operate the facility in compliance with all  
31    applicable laws and regulations.

32    (B) The person or entity described in paragraph (2) shall be  
33    currently licensed and in substantial compliance to operate a  
34    residential care facility for the elderly that is of comparable size  
35    or greater and has comparable programming to the facility. For  
36    purposes of this subparagraph, the following definitions apply:

37    (i) "Comparable programming" includes, but is not limited to,  
38    dementia care, hospice care, and care for residents with exempted  
39    prohibited health care conditions.

1     (ii) “Comparable size” means a facility capacity of 1 to 15  
2 residents, 16 to 49 residents, or 50 or more residents.

3     (C) The person or entity described in paragraph (2) shall not  
4 be subject to the application fee specified in Section 1569.185.

5     (D) If the department denies a proposal to secure the services  
6 of a person or entity pursuant to paragraph (2), this denial shall  
7 not be deemed a denial of a license application subject to the right  
8 to a hearing under Section 1569.22 and other procedural rights  
9 under Section 1569.51.

10    (f) Nothing in this section shall preclude the department from  
11 amending the effective date in the order of revocation and from  
12 pursuing any other available remedies if necessary to protect the  
13 health and safety of the residents in care.

14    SEC. 2. Section 1569.682 of the Health and Safety Code is  
15 amended to read:

16    1569.682. (a) A licensee of a licensed residential care facility  
17 for the elderly shall, prior to transferring a resident of the facility  
18 to another facility or to an independent living arrangement as a  
19 result of the forfeiture of a license, as described in subdivision (a),  
20 (b), or (f) of Section 1569.19, or a change of use of the facility  
21 pursuant to the department’s regulations, take all reasonable steps  
22 to transfer affected residents safely and to minimize possible  
23 transfer trauma, and shall, at a minimum, do all of the following:

24    (1) Prepare, for each resident, a relocation evaluation of the  
25 needs of that resident, which shall include both of the following:

26    (A) Recommendations on the type of facility that would meet  
27 the needs of the resident based on the current service plan.

28    (B) A list of facilities, within a 60-mile radius of the resident’s  
29 current facility, that meet the resident’s present needs.

30    (2) Provide each resident or the resident’s responsible person  
31 with a written notice no later than 60 days before the intended  
32 eviction. The notice shall include all of the following:

33    (A) The reason for the eviction, with specific facts to permit a  
34 determination of the date, place, witnesses, and circumstances  
35 concerning the reasons.

36    (B) A copy of the resident’s current service plan.

37    (C) The relocation evaluation.

38    (D) A list of referral agencies.

1 (E) The right of the resident or resident's legal representative  
2 to contact the department to investigate the reasons given for the  
3 eviction pursuant to Section 1569.35.

4 (3) Discuss the relocation evaluation with the resident and his  
5 or her legal representative within 30 days of issuing the notice of  
6 eviction.

7 (4) Submit a written report of any eviction to the licensing  
8 agency within five days.

9 (5) Upon issuing the written notice of eviction, a licensee shall  
10 not accept new residents or enter into new admission agreements.

11 (6) (A) For paid preadmission fees in excess of five hundred  
12 dollars (\$500), the resident is entitled to a refund in accordance  
13 with all of the following:

14 (i) A 100-percent refund if preadmission fees were paid within  
15 six months of notice of eviction.

16 (ii) A 75-percent refund if preadmission fees were paid more  
17 than six months but not more than 12 months before notice of  
18 eviction.

19 (iii) A 50-percent refund if preadmission fees were paid more  
20 than 12 months but not more than 18 months before notice of  
21 eviction.

22 (iv) A 25-percent refund if preadmission fees were paid more  
23 than 18 months but less than 25 months before notice of eviction.

24 (B) No preadmission refund is required if preadmission fees  
25 were paid 25 months or more before the notice of eviction.

26 (C) The preadmission refund required by this paragraph shall  
27 be paid within 15 days of issuing the eviction notice. In lieu of the  
28 refund, the resident may request that the licensee provide a credit  
29 toward the resident's monthly fee obligation in an amount equal  
30 to the preadmission fee refund due.

31 (7) If the resident gives notice five days before leaving the  
32 facility, the licensee shall refund to the resident or his or her legal  
33 representative a proportional per diem amount of any prepaid  
34 monthly fees at the time the resident leaves the facility and the  
35 unit is vacated. Otherwise the licensee shall pay the refund within  
36 seven days from the date that the resident leaves the facility and  
37 the unit is vacated.

38 (8) Within 10 days of all residents having left the facility, the  
39 licensee, based on information provided by the resident or  
40 resident's legal representative, shall submit a final list of names

1 and new locations of all residents to the department and the local  
2 ombudsperson program.

3 (b) If seven or more residents of a residential care facility for  
4 the elderly will be transferred as a result of the forfeiture of a  
5 license or change in the use of the facility pursuant to subdivision  
6 (a), the licensee shall submit a proposed closure plan to the  
7 department for approval. The department shall approve or  
8 disapprove the closure plan, and monitor its implementation, in  
9 accordance with the following requirements:

10 (1) Upon submission of the closure plan, the licensee shall be  
11 prohibited from accepting new residents and entering into new  
12 admission agreements for new residents.

13 (2) The closure plan shall meet the requirements described in  
14 subdivision (a), and describe the staff available to assist in the  
15 transfers. The department's review shall include a determination  
16 as to whether the licensee's closure plan contains a relocation  
17 evaluation for each resident.

18 (3) Within 15 working days of receipt, the department shall  
19 approve or disapprove the closure plan prepared pursuant to this  
20 subdivision, and, if the department approves the plan, it shall  
21 become effective upon the date the department grants its written  
22 approval of the plan.

23 (4) If the department disapproves a closure plan, the licensee  
24 may resubmit an amended plan, which the department shall  
25 promptly either approve or disapprove, within 10 working days  
26 of receipt by the department of the amended plan. If the department  
27 fails to approve a closure plan, it shall inform the licensee, in  
28 writing, of the reasons for the disapproval of the plan.

29 (5) If the department fails to take action within 20 working days  
30 of receipt of either the original or the amended closure plan, the  
31 plan, or amended plan, as the case may be, shall be deemed  
32 approved.

33 (6) Until such time that the department has approved a licensee's  
34 closure plan, the facility shall not issue a notice of transfer or  
35 require any resident to transfer.

36 (7) Upon approval by the department, the licensee shall send a  
37 copy of the closure plan to the local ombudsperson program.

38 (c) (1) If a licensee fails to comply with the requirements of  
39 subdivision (a), and if the director determines that it is necessary  
40 to protect the residents of a facility from physical or mental abuse,

1 abandonment, or any other substantial threat to health or safety,  
2 the department shall take any necessary action to minimize trauma  
3 for the residents. The department shall contact any local agency  
4 that may have placement or advocacy responsibility for the  
5 residents, and shall work with those agencies to locate alternative  
6 placement sites, contact relatives or other persons responsible for  
7 the care of these residents, provide onsite evaluation of the  
8 residents, and assist in the transfer of residents.

9 (2) The participation of the department and local agencies in  
10 the relocation of residents from a residential care facility for the  
11 elderly shall not relieve the licensee of any responsibility under  
12 this section. A licensee that fails to comply with the requirements  
13 of this section shall be required to reimburse the department and  
14 local agencies for the cost of providing the relocation services. If  
15 the licensee fails to provide the relocation services required in  
16 subdivisions (a) and (b), then the department may request that the  
17 Attorney General's office, the city attorney's office, or the local  
18 district attorney's office seek injunctive relief and damages in the  
19 same manner as provided for in Chapter 5 (commencing with  
20 Section 17200) of Part 2 of Division 7 of the Business and  
21 Professions Code.

22 (d) A licensee who fails to comply with requirements of this  
23 section shall be liable for the imposition of civil penalties in the  
24 amount of one hundred dollars (\$100) per violation per day for  
25 each day that the licensee is in violation of this section, until such  
26 time that the violation has been corrected. The civil penalties shall  
27 be issued immediately following the written notice of violation.  
28 However, if the violation does not present an immediate or  
29 substantial threat to the health or safety of residents and the licensee  
30 corrects the violation within three days after receiving the notice  
31 of violation, the licensee shall not be liable for payment of any  
32 civil penalties pursuant to this subdivision related to the corrected  
33 violation.

34 (e) A resident of a residential care facility for the elderly covered  
35 under this section, may bring a civil action against any person,  
36 firm, partnership, or corporation who owns, operates, establishes,  
37 manages, conducts, or maintains a residential care facility for the  
38 elderly who violates the rights of a resident, as set forth in this  
39 section. Any person, firm, partnership, or corporation who owns,  
40 operates, establishes, manages, conducts, or maintains a residential



1 care facility for the elderly who violates this section shall be  
2 responsible for the acts of the facility's employees and shall be  
3 liable for costs and attorney's fees. Any such residential care  
4 facility for the elderly may also be enjoined from permitting the  
5 violation to continue. The remedies specified in this section shall  
6 be in addition to any other remedy provided by law.

7 (f) This section shall not apply to a licensee that has obtained  
8 a certificate of authority to offer continuing care contracts, as  
9 defined in paragraph (8) of subdivision (c) of Section 1771.

10 *SEC. 3. No reimbursement is required by this act pursuant to*  
11 *Section 6 of Article XIII B of the California Constitution because*  
12 *the only costs that may be incurred by a local agency or school*  
13 *district will be incurred because this act creates a new crime or*  
14 *infraction, eliminates a crime or infraction, or changes the penalty*  
15 *for a crime or infraction, within the meaning of Section 17556 of*  
16 *the Government Code, or changes the definition of a crime within*  
17 *the meaning of Section 6 of Article XIII B of the California*  
18 *Constitution.*